

STATE OF CONNECTICUT

DEPARTMENT OF CONSUMER PROTECTION

IN THE MATTER OF

El Mismo Primo #5

Leyvi Rodriguez, Permittee

Leyvi Rodriguez, Backer

Permit LGB.14395

Case No. 2010-863

Docket No. 11-989

December 20, 2011

MEMORANDUM OF DECISION

This matter involves a grocer beer permit issued to El Mismo Primo #5, 2839 Fairfield Avenue, Bridgeport, Connecticut. A formal administrative hearing was held before the Department of Consumer Protection on September 22, 2011. Leyvi Rodriguez, permittee and backer, appeared. At the conclusion of the hearing, the record was left open for the submission of additional documents by the respondent.

The allegations against the permit premises arose from a special investigation conducted by the Department of Consumer Protection's Liquor Control Division in conjunction with the Bridgeport police department. It is alleged that on or about October 22, 2010, the respondent violated: (1) Section 30-86 of the Connecticut General Statutes by selling or delivering alcoholic liquor to a minor and (2) Section 30-91(d) of the Connecticut General Statutes by selling or deliver alcohol during prohibited hours; it is further alleged that on or about January 24, 2011, the respondent violated Sec. 30-

20(c) of the Connecticut General Statutes in that it was not primarily engaged in the retail sale of groceries.

Based upon the testimony and documents submitted at the hearing, and the additional documents submitted subsequent to the hearing, Charge 3, an alleged violation of Sec. 30-20(c), is dismissed.

The following facts are found based upon the testimony and documents presented at the hearing:

On October 22, 2010, in response to complaints concerning after hours sales, Liquor Control agents were conducting surveillance of El Mismo Primo #5. They were parked in an unmarked vehicle directly across the street from the premises. They had a clear and unobstructed view of the premises. At approximately 9:50 p.m., they observed two males enter the premises empty handed and exit approximately 2 minutes later, both carrying bags. One of these individuals was Cody Patrick McMahon whose date of birth is December 16, 1991. Mr. McMahon was 19 years of age at the time of the incident and thus a minor. Officers approached both men and determined that the bags contained beer. Mr. McMahon informed officers that he had purchased all the beer himself and he had not been asked for age identification.

The Liquor Control Act vests in the Commission a liberal discretionary power to determine factual matters with regard to liquor permits. Gulia v. Liquor Control Commission, 164 Conn. 537, 325 A.2d 455 (1973).

Therefore, based upon the substantial evidence presented, we hereby find the Respondent guilty of Charges 1 and 2, as alleged. The Respondent's liquor permit is hereby suspended for a period of twelve (12) days.

**DEPARTMENT OF CONSUMER PROTECTION
LIQUOR CONTROL COMMISSION
BY**

Elisa A. Nahas, Esq.
Designated Hearing Officer

Angelo J. Faenza, Commissioner

Stephen R. Somma, Commissioner

Parties:

Leyvi Rodriguez, Permittee
El Mismo Primo #5
2839 Fairfield Avenue
Bridgeport, CT 06605-3211
(Via US Mail and Certified Mail # 7010 1670 0000 0762 0467)

Leyvi Rodriguez
195 Pennsylvania Avenue
Bridgeport, CT 06610-11850
(Via US Mail and Certified Mail # 7010 1670 0000 0762 0528)

Nonparties:

John Suchy, Director, Liquor Control Division
Connecticut Beverage Journal
Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106